

March 3, 2000

The Honorable Carol M. Browner
Administrator
United States Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Dear Ms. Browner:

Enclosed for your consideration is the Report of the Small Business Advocacy Review Panel (SBAR Panel or the Panel) convened for the planned proposed rulemaking on **Effluent Limitations Guidelines and Standards for the Metal Products and Machinery Industry** that the Environmental Protection Agency (EPA or the Agency) is currently developing.

On December 7, 1999, EPA's Small Business Advocacy Chairperson convened this Panel under section 609(b) of the Regulatory Flexibility Act (RFA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA). In addition to the Chair, Panel consisted of the Director of the Engineering and Analysis Division of the Office of Science and Technology within EPA's Office of Water, the Chief Counsel for Advocacy of the Small Business Administration, and the Deputy Administrator of the Office of Information and Regulatory Affairs within the Office of Management and Budget.

The Report includes a discussion of the options under consideration for the proposed regulation under development, a description of the Panel's outreach to small entity representatives, a summary of small entity comments received by the Panel, and the Panel's findings and discussion. These are also summarized in an executive summary of the full panel report.

Sincerely,

/S/

Thomas E. Kelly, Chair
Small Business Advocacy
U.S. Environmental Protection Agency

/S/

John T. Spotila, Administrator
Office of Information and Regulatory Affairs
U.S. Office of Management and Budget

/S/

Jere W. Glover, Chief Counsel
Office of Advocacy
U.S. Small Business Administration

/S/

Sheila E. Frace, Director
Engineering and Analysis Division
Office of Water
U.S. Environmental Protection Agency

Executive Summary

Final Report of the Small Business Advocacy Review Panel on Effluent Limitations Guidelines and Standards for the Metal Products and Machinery Industry

This document serves as an executive summary of the Report of the Small Business Advocacy Review Panel (SBAR Panel or the Panel) convened for EPA's planned proposed rulemaking on Effluent Limitations Guidelines and Pretreatment Standards for the Metal Products and Machinery Point Source Category. These regulations are being developed by the Environmental Protection Agency (EPA) under the Clean Water Act Sections 304 and 307. They will control the direct discharge of pollutants to surface waters of the United States, as well as the indirect discharge of pollutants to publicly owned treatment works (POTWs), by establishing effluent limitations guidelines and pretreatment standards for facilities that manufacture, rebuild, and maintain finished metal parts, products, or machines.

Based on preliminary estimates, EPA believes there are as many as 107,000 facilities performing these MP&M activities in 18 industrial sectors. Because of the diverse nature of the industrial sectors and the large number of facilities in the MP&M industrial category, the MP&M rulemaking was initially divided into two phases. The phases differed from one another only in the industrial sectors that were included in each phase and the schedule for issuing regulations. The MP&M Phase I regulation was proposed on May 30, 1995. During the comment period, there was strong support for combining Phases I and II from state and local regulators, industry groups, and environmental groups. The Agency reviewed the comments received from these groups and agreed that it made sense from an implementation standpoint to combine the phases into one regulation which would cover all the industrial sectors in the MP&M industry.

The schedule for the MP&M rulemaking is included in a consent decree between the EPA and the Natural Resources Defense Council (NRDC). In February 1997, NRDC agreed with EPA's suggestion to combine Phases I and II of this project and issue one regulation to cover all sectors on the same schedule. The deadline for proposing the combined MP&M rulemaking is October 2000, with a final rule due by December 2002. The data used in developing the Phase I proposal will be combined with the Phase II data for the proposal and promulgation of the combined MP&M rule.

On December 8, 1999, EPA's Small Business Advocacy Chairperson (Thomas E. Kelly) convened this Panel under section 609(b) of the Regulatory Flexibility Act (RFA) as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA). In addition to its chairperson, the Panel consists of the Director of the Engineering and Analysis Division of the Office of Science and

Technology within EPA's Office of Water, the Deputy Administrator of the Office of Information and Regulatory Affairs within the Office of Management and Budget (OMB), and the Chief Counsel for Advocacy of the Small Business Administration (SBA).

It is important to note that the Panel's findings and discussion are based on the information available at the time this report was drafted. EPA is continuing to conduct analyses relevant to the proposed rule, and additional information may be developed or obtained during this process as well as from public comment on the proposed rule. The options the Panel identified for reducing the rule's regulatory impact on small entities will require further analysis and/or data collection to ensure that the options are practicable, enforceable, protective of public health, environmentally sound and consistent with the Clean Water Act.

Summary of Small Entity Outreach

EPA has actively involved stakeholders in the development of the proposed rule in order to ensure the quality of information, identify and understand potential implementation and compliance issues, and explore regulatory alternatives. EPA performed over 200 site visits to MP&M facilities and has participated in numerous meetings, seminars, and workshops that included substantial small business representation.

Prior to convening the Panel, EPA had several discussions, meetings, and conference calls with small entities potentially impacted by this regulation. During July and August 1999, EPA had several telephone discussions with small MP&M facilities, as well as several trade associations, to identify potential small entity representatives. EPA invited nine small MP&M facility owner/operators, one small municipality, and six trade associations representing different sectors of the industry to serve as potential small entity representatives (SERs) for the panel outreach process. The full Panel report lists the materials provided to them and summarizes their comments. Their full written comments are also attached. In light of these comments, the Panel considered the regulatory flexibility issues specified by RFA/SBREFA and developed the findings and discussion summarized below.

Panel Findings and Discussion

Under the RFA, the Panel is to consider four regulatory flexibility issues related to the potential impact of the rule on small entities (i.e., small businesses and municipalities):

1. The type and number of small entities to which the rule will apply.
2. Record keeping, reporting and other compliance requirements applicable to small entities.

3. The rule's interaction with other Federal rules.
4. Regulatory alternatives that would minimize the impact on small entities consistent with the stated objectives of the statute authorizing the rule.

The Panel's most significant findings and discussion with respect to each of these issues are summarized below. To read the full discussion of the Panel findings and recommendations, see Section 9 of the report.

Number and Types of Entities Affected

Based on its survey of 18 industrial sectors, EPA believes that as many as 107,000 facilities are performing activities that are covered by the MP&M proposal. However, it is likely that a large number of these facilities will not be subject to the MP&M regulation as a result of a flow cutoff for indirect dischargers. In addition, many of these facilities do not discharge wastewater and therefore would not be subject to this regulation. Several SERs commented during outreach meetings that the distribution between the number of discharging facilities and zero-discharging facilities in the preliminary data presented to them did not appear to be accurate. In addition, one SER commented that EPA's estimate of the number of printed wiring board facilities may not include the entire universe.

Potential Reporting, Record keeping, and Compliance Requirements

The proposed rule will not contain specific monitoring, record keeping or reporting requirements. Such requirements are already contained in regulations for the existing NPDES and national pretreatment programs, which grant substantial discretion to local permitting authorities to determine appropriate site-specific monitoring regimes. However, since EPA bases its regulatory limits on its assumed monitoring regime, EPA generally recommends that permitting authorities consider this regime in determining appropriate monitoring frequencies. The Panel noted that there are MP&M facilities that are currently required to monitor less frequently than under the monitoring regime EPA has assumed for the development of limits and cost estimates for the proposed rule. The Panel believes, therefore, that basing limits on, and recommending to permitting authorities, a reduced monitoring regime for small businesses may result in significant monitoring relief for some of these businesses. The Panel recommends that EPA consider this option along with other approaches discussed below for reducing monitoring costs for small entities. The Panel also noted that EPA can affect monitoring requirements through its choice of regulated parameters, as discussed below.

The Panel discussed the possibility of allowing dischargers to waive monitoring requirements for regulated pollutants when it can be otherwise demonstrated that they are adequately controlled or are not present in concentrations greater than ambient background levels. The Panel also discussed whether Best Management Practices (BMP) could be promulgated in lieu of numeric limitations for low volume

discharge sites. EPA will, at a minimum, carry out analyses to assess these options and solicit comment on them in the preamble to the proposed rule. The Panel strongly endorses EPA's plans to explore these options. The Panel also recommends that EPA give serious consideration to allowing the use of BMPs instead of numerical limitations, at least for some pollutants and/or categories of facilities.

There was considerable discussion, both with SERs and among Panel members, about the regulation of toxic organic constituents in the MP&M proposal. The preliminary data that EPA presented to the SERs and the Panel showed that toxic organic constituents make up only a small portion of the total toxic pollutant loads. However, the Panel noted that the data presented to the SERs were preliminary and were not segregated into subcategories. It is possible that once EPA analyzes pollutant loads on a subcategory basis that organic constituents could comprise a higher portion of a particular subcategory's total pollutant loads. However, if subsequent analysis does not reveal toxic organics at levels higher than what appears in the current data, the Panel recommends that EPA give serious consideration to not proposing pretreatment standards for these pollutants, but rather leaving their regulation to the local limit determinations of individual POTWs or existing effluent limitations guidelines. If the projected toxic removals remain similarly low for the direct dischargers, the Panel recommends that EPA give serious consideration to not proposing national limits for these pollutants, but rather leaving their control to existing effluent limitations guidelines or to the best professional judgment of local permit writers. The Panel recommends that EPA continue to analyze whether toxic organic constituents are present at levels which would warrant regulation on a subcategory basis. In addition, the Panel discussed the use of potential organic indicator methods as a way to reduce monitoring costs. EPA intends to continue analyzing these options and ultimately propose an option (or a combination of several options) that offers the maximum flexibility for MP&M facilities while still being protective of the environment. The Panel strongly supports EPA's plans to try to identify an appropriate organic indicator for the MP&M proposal if it turns out that limitations on organic pollutants are appropriate for one or more subcategories.

In addition, the Panel recommends that EPA not regulate TSS, pH, iron, or aluminum for indirect dischargers.

Related Federal Rules

Because this regulation covers 18 different industrial sectors, the Panel devoted significant discussion to the potential overlap this proposal may have with other effluent guidelines. At this time, EPA anticipates that the proposed rule will replace the Metal Finishing and Electroplating regulations for sites above a certain flow cut-off with operations in one of the MP&M industrial sectors. EPA is also considering covering in the MP&M proposal several types of non-manufacturing iron and steel facilities (e.g. wire drawers, bar drawers, pipe and tube manufacturers, batch hot dip coaters) that are currently covered by the Iron & Steel regulations. It is anticipated that facilities covered by other metals-related guidelines (e.g., Aluminum Forming, Porcelain Enameling, Electrical and Electronic Component Manufacturing) will continue to be covered under their industry-specific guideline. The Panel

recommends that EPA attempt to minimize the potential for MP&M facilities to be covered by more than one guideline, in order to reduce the cost and administrative complexity of compliance. Accordingly, EPA should evaluate whether any of the older effluent guidelines (in addition to Metal Finishing and Electroplating) could be replaced in whole or in part by the MP&M regulation, and whether facilities covered under another effluent guideline could be excluded from the MP&M regulation due to their existing coverage.

The Panel also noted the American Wire Products Association request that the “stand-alone” wire industry not be included in MP&M but remain subject to the Iron and Steel regulation instead. The association stated that this rule change would cause the steel min-mills that produce wire products to be subject to one regulation, and the stand-alone industry to be subject to another, although both have substantially similar production processes. The Panel recommends that EPA carefully examine this request in development of the proposed MP&M rule.

Regulatory Alternatives

The Panel agreed that, for many sectors, the high cost effectiveness ratios and low levels of toxic removals appear quite unfavorable relative to those of many previous effluent guidelines. However, the Panel noted that the costing and pollutant loadings information supplied to the Panel and the SERs was preliminary and that some of the underlying data is still being revised. In addition, the data supplied to the SERs were not presented by subcategory, but rather by primary industrial sector. EPA intends to analyze the cost and pollutant removal data on a subcategory basis. In cases where there are potential high economic impacts compared to low pollutant reductions or low environmental benefits for a specific subcategory, the Panel recommends that EPA seriously consider regulatory alternatives (including no regulation) in order to reduce any significant economic impacts that are not justified by environmental improvements and to improve the cost-effectiveness of the guidelines. If the subcategory-specific data, as determined at the time of proposal, shows pound-equivalent removals per facility that are comparable to levels which EPA has determined not to regulate in other rulemakings (i.e. Industrial Laundries and Landfills), the Panel recommends that EPA give serious consideration to not including pretreatment standards for such subcategories in the proposal, consistent with the approach taken in these other rulemakings.

The Panel discussed the possibility of adopting a flow cut-off for the MP&M regulation for indirect dischargers where there are low pollutant loadings or the costs of removal may not be economically achievable. The Panel recommends that EPA perform additional analyses, on a subcategory basis, in order to determine what flow cutoff is most appropriate, considering costs for small businesses, administrative burden for the local control authorities, environmental benefits, and pollutant loads. The Panel suggests that EPA give serious consideration to flow cutoffs above the 1 MGY level where appropriate, and believes EPA may find it appropriate to consider flow cutoffs above 6.25 MGY for some subcategories. If the relationship between environmental benefits (as suggested by the current pollutant reduction estimates) and costs does not appear significantly more favorable as a

result of further analysis, the Panel believes it likely that some combination of flow cutoffs above 1 MGY and exclusions for specific industry sectors and/or subcategories would be appropriate.

Methodological Issues

The Panel discussed several methodological issues related to the manner in which EPA plans to calculate costs, loads, and limitations for the MP&M proposal. Several SERs raised concerns regarding a facility's ability to meet the BAT limitations developed for the 1995 Phase I proposal on a consistent basis. The Panel discussed a number of technical issues regarding the use of limited data to generate limits and the methodology (including data editing criteria) used to set the limits. The Panel also discussed EPA's recent modifications to the toxic weighting factors and the POTW removal rates that affect EPA's calculation of the cost-effectiveness of this rule, and may affect comparison of this rule to other previous effluent limitations guidelines. The Panel recommends that EPA carefully examine the specific methodological concerns raised by SERs, attempt to improve its methodology to address these concerns where appropriate, document all technical and costing assumptions in the rulemaking record, and request comment on these methodological issues in the preamble to the proposed rule.